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SPINE MP
LERNER, DAVID, et al.
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

MAILED

APR 01 2010

OFFICE OF PETITIONS

In re Application of :
Joseph P. Errico, et al. :
Application No. 10/784,597 : DECISION ON PETITION
Filed: October 12, 2004 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: SPINE 3.0-437 :
CIPCIPCI :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 4, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the Application Data Sheet (ADS) filed with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

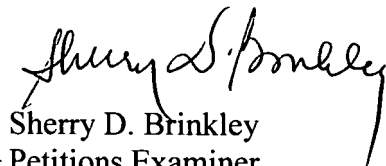
The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the

benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

The corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 3738 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt



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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	TOT CLAIMS	IND CLAIMS
10/784,597	10/12/2004	3738	790	SPINE 3.0-437 CIPCIPCI	20	2

CONFIRMATION NO. 8309

CORRECTED FILING RECEIPT

51640
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WESTFIELD, NJ 07090



0000000040910975

Date Mailed: 03/31/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

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Power of Attorney: The patent practitioners associated with Customer Number 000530

Domestic Priority data as claimed by applicant

This application is a CON of 10/282,356 10/29/2002 PAT 7,169,182
which is a CIP of 10/256,160 09/26/2002 PAT 6,989,032
which is a CIP of 10/175,417 06/19/2002 PAT 7,563,285
which is a CIP of 10/151,280 05/20/2002 PAT 7,604,664
which is a CIP of 09/970,479 10/04/2001 PAT 6,669,730
and is a CIP of 10/140,153 05/07/2002 ABN
and said 09/970,479 10/04/2001
is a CIP of 09/968,046 10/01/2001 ABN
and said 10/140,153 05/07/2002
is a CIP of 09/970,479 10/04/2001 PAT 6,669,730
and is a CIP of 10/128,619 04/23/2002 PAT 6,863,689
which is a CIP of 09/906,119 07/16/2001 PAT 6,607,559
and is a CIP of 09/982,148 10/18/2001 PAT 6,673,113

Foreign Applications

If Required, Foreign Filing License Granted: 08/09/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/784,597**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
Title

Artificial intervertebral disc trials having a cylindrical engagement surface

Preliminary Class

606

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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NOT GRANTED

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